

Members

Sen. Potch Wheeler, Chairperson
Sen. Becky Skillman
Sen. Richard Young
Sen. James Lewis
Rep. Markt Lytle
Rep. James Bottorff
Rep. Richard Mangus
Rep. Phyllis Pond



NATURAL RESOURCES STUDY COMMITTEE

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Authority: IC 2-5-5-1

MEETING MINUTES¹

Meeting Date: August 28, 2002
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington St., Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Sen. Potch Wheeler, Chairperson; Sen. Becky Skillman; Sen. Richard Young; Sen. James Lewis; Rep. Markt Lytle; Rep. James Bottorff; Rep. Richard Mangus; Rep. Phyllis Pond.

Members Absent: None.

Senator Wheeler called the meeting to order at 10:20 a.m. After an introduction of the committee members testimony was received.

John Goss, Director, Department of Natural Resources (DNR)

Mr. Goss provided an update on the situation at the state parks under the state's current economic condition. The parks in Indiana were kept open, while some other states had to close parks to keep on budget. The parks have stayed on their reduced budgets by doing things to reduce costs, including employing 25% fewer workers this year and deferring

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

maintenance projects. He would like to create or raise certain user fees to help keep the parks open. New fees could raise about \$3 million. Concerning the development of a point-of-sale (POS) to provide fishing, hunting and trapping licenses, he would like the legislature to reallocate about \$5 million from the Lifetime License Fund to develop POS. The Lifetime Hunting and Fishing License Trust Fund (Trust Fund) currently has about \$19 million. This onetime transfer would develop and operate the system for three years. At the end of three years license fees could be adjusted to make sure the system is self funded.

Glen Salmon, Director, Division of Fish and Wildlife, DNR

Mr. Salmon stated that the present paper system to issue hunting, fishing, and trapping licenses has been around for about 100 years. He distributed information concerning POS. (Exhibit A) About 22 states have already adopted a POS system. He spoke of the advantages to having POS, including the following:

- For licensing agents: reduced bookkeeping; decreased customer wait time; elimination of the bonding requirement; and the ability to sell all the types of licenses all the time.
- For hunters and anglers: access to all types of licenses; and decreased time it takes to purchase a license.
- For DNR: more accurate data; less paperwork; faster account reconciliation; and greater compliance with federal laws and interstate compacts.

The estimated cost per license (excluding the vendor's fee of 75 cents) would be \$1.48. Public comment has been favorable toward a POS system. He would like 25% of the Trust Fund to be used to develop and implement POS along with Trust Fund interest to maintain the system.

In answer to Committee questions Mr. Salmon stated the following:

- The vendors fee would remain 75 cents per license under POS since this fee is set by statute.
- Five DNR staff run the current system, but the number of employees to run POS is not yet known.
- Certain issues concerning POS, like what the license would look like, have been left open-ended to give vendors flexibility in designing the system.

Dick Mercier, Indiana Sportsmen Roundtable

Mr. Mercier stated that Indiana should have had a POS system in place years ago and urged DNR to go forward with its implementation.

Gary Doxtater, former Director, Fish and Wildlife, DNR

Mr. Doxtater stated that he supported POS when he was director and because of POS's many benefits the system should be set-up.

Paula Yeager, Indiana Wildlife Federation

Ms. Yeager supported POS and indicated it could allow Indiana to receive more federal funds.

Phil Ohmit, Hoosier Conservation Alliance

Mr. Ohmit supported POS because he has seen it work in other states and because it would help law enforcement efforts.

John Goss, Director, DNR

Mr. Goss stated that DNR would like to find a source of funds to pay counties for property DNR manages. These properties are not paying local property taxes. Many resolutions have been received from local governments asking DNR not to purchase more property through the Heritage Trust program. DNR would like to pay each county \$2 per acre for the land DNR owns in each county. However, they would propose \$3 per acre in counties where DNR owns more than 5% of the land. A chart was distributed showing the amount of acres DNR owns in each county. (Exhibit B) The Heritage Trust program receives about \$1.8 million from the sale of license plates. He would like to find a funding source that is outside of this program.

Lynn Dennis, The Nature Conservancy

Ms. Dennis testified that the Nature Conservancy is a group that works on land and water conservation. They have worked with other groups to conserve about 40,000 acres in Indiana. The biggest obstacle to acquiring new land is local opposition that is concerned about the loss to the tax base. They support looking to new funding sources to pay for that local tax loss. An example is Pennsylvania which this year increased solid waste disposal fees for environmental and conservancy purposes. Similar legislation was proposed in Virginia, but did not pass. Indiana landfills dispose of 13 million tons of solid waste each year. A \$1 increase in tipping fees would generate enough money to fund a payment in lieu of taxes program. A \$2 fee increase would cost each household \$12-\$13 per year. A poll of Indiana residents indicated that they would prefer gaming to be the source of the funds. Another possible source would be to raise the sales disclosure form fee from \$5 to \$50. Based on current housing sales this would raise about \$9.1 million per year. Ms. Dennis distributed a paper containing information on various revenue raising ideas. (Exhibit C)

While answering Committee questions, Ms. Dennis stated that her solid waste proposal would not affect transfer stations, just landfills. The fee increase would be low enough that it probably would not cause out-of-state haulers to ship waste to other states, so a fee increase would not have much of an impact on local landfill revenues. The local governments that receive the distribution of revenue would be allowed to determine how the revenue is used.

Rep. Pond asked Ms. Dennis to provide information on the current county property tax rate for each county.

Dax Denton, Association of Indiana Counties (AIC)

Mr. Denton stated that a payment in lieu of taxes (PILT) program has been an important issue to counties for years. Counties lose revenues when the state owns the land because property tax revenue is lost. There are many ways for the state to generate the revenue to fund PILT. The AIC is exploring many options at this time.

In answer to Committee questions, Mr. Denton said the payment would help compensate the counties for the services the state parks use (e.g. EMT, fire protection, etc.).

Sen. Skillman stated that because of other factors not all counties need the same amount of money per acre. A county that receives \$2 per acre may be in more need than a county that receives \$3 per acre.

Bob Kraft, Indiana Farm Bureau

Mr. Kraft stated that the Farm Bureau supports PILT. However, they are not as supportive of the funding of the Heritage Trust program. DNR is not the only state agency that owns large amounts of property (e.g. Corrections, Universities, INDOT). If DNR should have to pay fees because of their large landholdings the same logic would extend to other agencies. The proposed funding ideas also must also look at secondary issues (e.g. if solid waste fees get too high - more trash begins to appear on county roads). The Farm Bureau supports examining various funding sources.

Brian Wright, Hoosier Environmental Council

Mr. Wright supports PILT because having public lands is important to all citizens but counties face a burden with reduced property tax income. Under a PILT program the financial impact that counties now must contend with would be reduced.

Tonya Galbraith, Indiana Association of Cities and Towns

Ms. Galbraith stated that if funds are found the money needs to be distributed equitably between all governmental units that provide services to state properties.

John Goss, Director, DNR

Mr. Goss stated that DNR has had to manage its programs while reducing the operating budget by about \$10 million. Currently, the Natural Resources Commission (Commission) has authority to set certain recreational fees (e.g. camping, horse tags) and about 37 fees are established in statute. DNR would like some of the statutory fees to be set by the Commission in the future. DNR has looked at similar fees in surrounding states, with a goal of raising Indiana's fees to the average fee from adjacent states.

Comments from Committee members indicated that though they give deference to DNR's expertise, the role of raising fees in the General Assembly allows legislators to respond to constituent concerns and to be held accountable.

Mr. Goss introduced DNR's Division Directors, who presented the proposals to increase fees in the following areas (Exhibits D & E):

Bruce Stevens, Director, Division of Reclamation

- Coal mining reclamation fee
- Coal combustion waste haul back fee
- Estimated total increase - \$950,000

Glen Salmon, Director, Division of Fish and Wildlife

- 16 different fish and wildlife fees
- Estimated total increase - \$47,990

Mike Neyer, Director, Division of Water

- Lake preservation act fee
- Flood control act fee
- Sale of water: Water Resources Development Fund - with fees to be set by the Indiana Utility Regulatory Commission
- Dam inspection fee
- Estimated total increase - \$424,200

John Bacone, Director, Division of Nature Preserves

- Ginseng license fee
- Estimated total increase - \$3,750

Rachel Perry, Director, Division of Historic Sites

- Admission fee to historic sites
- Estimated total increase - \$1,087,932

Burney Fischer, Director, Division of Forestry

- Licensed timber buyer fee and the fee for each additional agent
- Estimated total increase - \$19,050

Mike Nickolaus, Director, Division of Oil and Gas

- Temporary abandonment authorization fee
- Permit transfer fee
- Expedited permit fee for permits other than Class II and noncommercial gas
- Permit fee for all permits other than Class II
- Permit fee for Class II permits
- Estimated total increase - \$104,900

Emily Kress, Director, Division of Outdoor Recreation

- Registration fee for off-road vehicles
- Estimated total increase - \$192,000

Bob Waltz, Director, Division of Entomology and Plant Pathology

- Nursery dealer license fee
- Nursery inspection certification fee
- Annual publication - to be published on the inter-net - would save \$5,500
- Inspection certification fee for greenhouses and florists

Mr. Goss concluded that the total fee increases would raise about \$3 million which would allow DNR to restore many programs that have been cut. The increased fees would not create new programs or expand existing programs.

The Chairperson called a recess of the meeting until 1:00 p.m.

Rep. Richard Mangus, State Representative, District 21

Rep. Mangus explained how he became involved in the issue of abandoned railroad rights-of-way. In 1976, his farm was divided by a railroad that had been purchased by Penn-Central Railroad. When the railroad was abandoned there were conflicting opinions on who could use or own the land. DNR and a private group wanted to be given the land to put in a trail. The railroad wanted to sell the property owners the land. The Attorney General issued an opinion that the adjacent property owners who had granted an easement owned the land. A lawsuit was filed to determine who owned the property. Six years later Rep. Mangus sold his farm and had to withdraw from the lawsuit. Recently, the lawsuit ended, but some property owners received letters offering to sell them the adjacent

railroad land. He asked for this issue to be heard so the legislators could find out what is happening with abandoned railroad rights-of-way.

Nels Ackerson, Director, Sommer, Barnard, & Ackerson, P.C., Indianapolis and Washington D.C.

Mr. Ackerson distributed copies of his testimony to Committee members. (Exhibit F) His remarks to the Committee included the following points:

- Several legislators have worked to protect landowners from railroads who have attempted to sell land they did not own.
- A settlement was reached in the *Firestone v. Penn Central* case two years ago. However, issues related to processing the settlement are still being addressed.
- Citizens and state and local governments are missing economic opportunities from valuable right-of way resources. Many abandoned railroad corridors are being used by utilities (e.g. Internet fiber optic lines) to connect cities across the country, but the owners of these corridors are not receiving compensation for the value their land provides.
- Indiana courts have been setting legal precedents that have been followed nationally.
- Issues that need to be addressed legislatively:
 - Corridor use designations
 - Trail sponsor responsibility
 - Property valuation of land after ownership has been established
 - Tax transfer procedures
 - Right-of-way land recording procedures
 - Reasonable compensation to local governments
 - Reasonable compensation to state government

In response to Committee questions Mr. Ackerson stated the following:

- The methods to calculate reasonable rents are very diverse. Santa Barbara received a one time \$1 million payment, while a reservation received a percentage of the gross revenue based on a calculation. He stated that he would provide the Committee with more examples.
- The two most common ways that railroads acquired land was through fee simple title or an easement. More than 50% of the railroad lines in Indiana were granted by easement.

Henry Price, Attorney, Indianapolis

Mr. Price stated that it is important to establish title to abandoned railroad lands. Using, selling, and developing land can not proceed until title is established. Also, certain legal rights (e.g. a trespass action) require the plaintiff to prove they have title to the land. The day before this hearing Penn Central agreed to terms that will resolve the concerns that were raised by the seven constituents who contacted their legislators. He stated that he would continue to represent land owners if other similar cases occur. Property owners who receive adjacent land that has utilities on the property do not automatically receive rent payments for the use of the land. The landowner does have a right to the rent but those rights must be exercised by the landowner.

Bob Kraft, Indiana Farm Bureau

Mr. Kraft stated that many of the ownership problems occur in rural areas. The Farm Bureau supports Mr. Ackerson's legislative proposals.

John C. Wilkerson, Managing Director, Peterson Consulting Worldwide (Peterson), Dallas, Texas

Mr. Wilkerson distributed information concerning the settlement process of a class action law suit. (Exhibit G) Peterson works as a neutral administrator to manage settlement agreements, including the distribution of benefits. The following is the process they use to administer settlement agreements:

- Fieldwork data collection to identify property owners
 - A geo-referenced map is created that combines data from original railroad maps, county tax/plat maps, tax cards, and real world street data.
- Claimant identification
 - Parcels of land that adjoin the railroad corridor area and the owners of the land are identified and entered into the database.
 - Peterson does not determine the type of interest (e.g. easement, fee simple) the owner has in the corridor.
- Notifying claimants
 - Notices and claim forms are sent to owners. Peterson has customer service representatives who are available to help owners fill-out the claim forms.
- Claims processing
 - Forms that are returned are processed and an eligibility determination is made.
- Benefit distributions
 - Eligible owners are sent their portion of the settlement distribution.
- Final reports to the court

Diane Vonnegut, Citizen

Ms. Vonnegut questioned how property owners who were determined to not be owners of the adjacent corridor were later able to receive the adjacent land. The Chairperson allowed Henry Price to answer the question. He stated that 100 year old documents were used to help determine ownership but these documents were difficult to interpret. Penn Central was willing to make an accommodation to these owners.

Bob Feitz, Landowner

Mr. Feitz related his experience with the settlement process. He received a letter from the settlement center offering to sell him the adjacent railroad property. He had to pay a title company to prove that he already owned the property.

Marcia Allie, Landowner

Ms. Allie was introduced to the Committee by Representative Dale Grubb. She spoke about her and her husband's experience in the settlement process. The settlement center

sent them a letter stating that their property did not qualify for the settlement. They were then given 45 days to purchase the adjacent railroad land. During this time it was hard to contact someone who could provide them answers to their questions. After a difficult time, however, the land ownership issue was resolved.

The meeting was adjourned at 3:05 P.M.